XI-HC-22

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

CRIMINAL APPEAL NO. 794 of 2005

Appellants

1. Dujram,
   S/o Shri Ramu Ram Danuhar,
   Aged about 20 years,

2. Ramu Ram
   S/o Daura Ram Danuhar,
   Aged about 50 years,

3. Sukrit Kunwar,
   W/o Ramu Ram,
   Aged about 42 years.

VERSUS

Respondent State of Chhattisgarh,
Through Thana – Pali, Korba, Dist. Korba (C.G.)

Present:

Shri Goutram Khetrapal with Shri Suresh Verma, Advocates for the appellants.

Shri Arun Sao, GA for the State.

ORAL JUDGMENT

(14th September 2007)

Dhirendra Mishra, J

This criminal appeal under Section 374(2) of the Code of Criminal Procedure is directed against the judgment of conviction and order of sentence dated 28.9.2005 passed in

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

S.T.No. 62/04 whereby learned Additional Sessions Judge, Korba, has convicted the appellants under Sections 498A,304B of IPC and sentenced each of them to undergo R.I. for 3 years, pay a fine of Rs.500/- and R.I. for 7 years, respectively and in default of payment of fine to undergo additional R.I. for 3 months. All the sentences have been directed to run concurrently.

2. Briefly stated case of the prosecution is that deceased Kulmatbai was married to appellant No. 1 Dujram in the month of March, 2003, who consumed poison on 9.3.2004 at her matrimonial house and died in the hospital. At the time of marriage accused Durgesh, Umendra and other accused persons had quarreled on the pretext of inadequate dowry and the complainant party was threatened when they went to village Lafa in connection with *Chouthiya* ceremony on account of the dispute that was raised at the time of marriage in relation to dowry. It is further case of the prosecution that the deceased was harassed by accused persons in the name of demand of dowry and when she returned to her parental house after one month of the marriage, then also she informed her parents that her mother-in-law, father-in-law and husband treated her with cruelty for dowry. During investigation Inquest of Ex.P/3 was performed over the dead body of

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Kulmatbai. A team of Dr. Pradeep Agrawal (PW-14) and Dr. S.S. Paikra (PW-15) conducted postmortem over the person of deceased and gave their report of Ex.P/17 and replied to queries of the police vide Ex.P/18 & 19. The First Information Report of Ex.P/20 was registered on 9.4.2004 by Station House Officer, P.S. Pali on the basis of information given by mother of the deceased Smt. Tulkunwar. After completing investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Katghora.

3. During trial the prosecution examined 18 witnesses. The accused persons in their statements recorded under Section 313 of the Cr.P.C. pleaded innocence and stated that the witnesses are lying and they never demanded dowry. Learned trial Court after hearing counsel for the respective parties convicted and sentenced the appellants as mentioned in paragraph one of this judgment. However, accused Durgesh and Umendra Singh were acquitted of the above charges.

4. Learned counsel for the appellants submits that the prosecution has utterly failed to prove cause of death of deceased Kulmatbai as doctors performing autopsy have categorically stated that they are not in a position to opine regarding cause of death and opinion can be given only after

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

viscera report is obtained. However, chemical examination report of the viscera has not been produced during trial and as such, it cannot be said that deceased Kulmatbai died unnatural death which is condition precedent for convicting the accused persons under Section 304B of the IPC. He further argued that conviction of the appellants is based on the statements of PW-4 Smt. Kareliyabai, PW-5 Smt. Tulkunwar, PW-6 Fagnu Singh and PW-7 Vishram Singh. It is argued that only general and omnibus allegations regarding demand of dowry have been made by the above witnesses and there is no specific allegation against the accused/appellants that they subjected the deceased to cruelty for demand of dowry. Referring to paragraph 10 of the statement of Smt. Tulkunwar (PW-5), mother of the deceased, it is stated that relationship between the deceased and accused persons was cordial, which is evident from the fact that the deceased visited 10-12 times to her parental home after her marriage and at times she was accompanied by her husband i.e. appellant No. 1 who also assisted them in their thrashing operation. It is also contended that appellant No. 1 Duiram and deceased resided in a separate residence whereas appellants No. 2 & 3 were residing separately in other house, which is further corroborated by the statement of PW-4 Manglu Ram.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

5. It is further argued that PW-7 Vishram Singh, father of the deceased, has made allegations against appellant No. 1 Dujram only regarding harassment and has categorically denied that appellants No. 2 & 3 used to harass the deceased for dowry. The diary statements of the witnesses have been recorded after two months of the incident on 3.5.2004.

6. On the other hand, learned counsel for the State/respondent supported impugned judgment of the trial Court and submitted that the deceased died by consuming poison in her matrimonial house only within one year of her marriage and in the post mortem report numerous injuries have been found on both her legs, which is indicative of the fact that she was tortured just before her death. PW-4 Smt. Kareliyabai, PW-5 Smt. Tulkunwar, PW-6 Fagnu Singh and PW-7 Vishram Singh have categorically stated that she was tortured by her husband as also other appellants in the name of demand of dowry and therefore, the appellants have rightly been convicted by the trial Court.

7. I have heard learned counsel for the parties and have gone though the evidence available on record as also the impugned judgment.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

8. PW-14 Dr. Pradeep Agrawal has conducted postmortem over the person of the deceased and has given a report of Ex.P/17. In paragraph 4 of his deposition before the Court he has stated that there were abrasions over right leg, left leg and fingers, forth was coming out from her mouth and nostrils, the body was cyanosed, fingers' nails were bluish in colour, membrane of the brain was congested, trachea and larynx were congested, heart was empty, there was discolored white fluid in the stomach, intestines were swollen and spleen, liver were congested. Viscera was preserved and it was referred for chemical examination. In reply to the queries of the police, the doctors have stated that froth was coming out from the mouth and nostrils, the cause of death may be due to oregano phosphorous poisoning, injuries present over her legs could be caused due to rubbing as she was brought on motorcycle and congestion of the organs described in the postmortem report may be due to poisoning. In reply to query, he further stated that since husband of the deceased himself brought her with a case history of poisoning, therefore, in the postmortem report death of the deceased is mentioned due to consumption of poison.

9. It is true that medical report of the viscera is not available on record. However, from perusal of the postmortem

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

report it is evident that the deceased died unnatural death within one year of her marriage.

10. PW-5 Smt. Tulkunwar, mother of the deceased, has stated that the deceased was married with Dujram in the year 2003 in the month of Fagun i.e. March. She has further stated that after some days of Holy festival she had gone to village Lafa. At that time her daughter was erecting wall, she stayed there on Monday and thereafter, returned to village Baisemar to her elder daughter, where she was informed that deceased Kulmatbai has fainted and fallen whereupon she went to Lafa. However, the house of her daughter was locked. She enquired about her daughter but they did not give any satisfactory reply. She has further stated that at the time of marriage also accused Umendra Singh has quarreled for inadequate dowry. Her daughter came to her house in *Jutiya* festival and at that time she was complaining that she was harassed in the name of demand of dowry for cycle and watch. She stayed for 10-12 days and thereafter, Dujram came to take her back and promised that he shall not commit this mistake in future. Thereupon, they sent their daughter with Dujram. After hearing that her daughter has fainted and fallen, they went to her house and ultimately, went to Pali Hospital and found her dead body in mortuary. In paragraph 9 she has stated that on

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित ४	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the eve of *Jutiya* festival when Dujram came to take her daughter, he had promised that he shall not commit the mistake in future.

11. PW-7 Vishram Singh is father of the deceased. He has also reiterated the allegation of quarrel at the time of marriage in the name of demand of dowry by the acquitted accused persons and stated that his daughter was tortured for dowry of cycle and watch. However, he has specifically stated that her daughter was tortured and harassed only by Dujram because he alone beat her, as informed by his daughter. In paragraph 7 he has further stated that his daughter returned to his house and stayed there for 8-10 days. Thereafter, Dujram came to take her and when he refused that he would not send his daughter with him, then two elderly persons who had come with Dujram gave assurance that whatever has happened in the past has happened, henceforth Dujram would not harass Kulmatbai in any manner, therefore, on this assurance he sent his daughter with Dujram after Dashhara. In paragraph 13 this witness has categorically stated that it is wrong to say that her mother-in-law and father-in-law used to harass the deceased for dowry. He never deposed so in his diary statement of Ex.D/2 and in fact the boy has murdered his daughter. Similar is the statement of Khem Singh (PW-8) who has also

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 9	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

stated that when Dujram came to take the deceased, her father refused to send her as he used to harass and beat her, whereupon Dujram promised before him that he shall not beat her and then only he sent his daughter with Dujram and thereafter, she did not return and was murdered there.

12. From perusal of the statements of above witnesses it is established that death of Kulmatbai was unnatural which occurred within one year of her marriage by consuming poison at her matrimonial house. There is evidence against her husband that he used to torture and harass her on account of demand of dowry.

13. Thus, on the basis of evidence available on record it is evident that the deceased was subjected to cruelty and harassment in connection with demand of dowry by her husband appellant No. 1 Dujram and in view of Section 113B of Evidence Act, this Court is of the considered opinion that appellant No. 1 Dujram was responsible for causing dowry death of Kulmatbai. Accordingly, the appeal preferred by appellant No. 1 Dujram being without force is liable to be dismissed and is hereby dismissed.

14. However, taking into consideration the categorical statement of father of the deceased that her daughter never

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complained that she was harassed or tortured by appellants No. 2 & 3 i.e. Ramu Ram and Sukrit Kunwar in connection with demand of dowry, this Court is of the considered opinion that the Court below was not justified in convicting the appellants under Sections 498A and 304B of the IPC.

15. In the result, the appeal preferred by appellants No. 2 & 3 i.e. Ramu Ram and Sukrit Kunwar is allowed. Their conviction under Sections 498A and 304B of the IPC and sentence passed thereon, are set aside. They are acquitted of the above charges and be set at liberty forthwith if not required in any other case.

Sd/-
Dhirendra Mishra
Judge

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